

**I. David Rosenstein**  
General Counsel  
500 N. Wakefield Drive  
Newark, DE 19702

P.O. Box 6066  
Newark, DE 19714-6066

(302) 451-5441 – Telephone  
(302) 235-5264 – Facsimile  
Email: [david.rosenstein@pepcoholdings.com](mailto:david.rosenstein@pepcoholdings.com)



January 12, 2007

Mr. Robert Howatt  
Delaware Public Service Commission  
861 Silver Lake Boulevard, Suite 100  
Dover, DE 19904

Dear Mr. Howatt:

Dr. Firestone has requested access to Bidder's proposals (the "Proposals") submitted in response to Delmarva's RFP. You have asked Bidders to provide a response to the Service List by January 12, 2007 regarding Dr. Firestone's request. This should be considered to be Conectiv Energy Supply, Inc.'s ("CESI") response.

Commission Rule 10 provides for public inspection of all "public records" located at the Commission. Commission Rule 11 provides for a limitation on the availability of public records that might otherwise be available for inspection under Rule 10. Specifically, Rule 11 provides that persons submitting documents to the Commission can seek confidential treatment of such documents. Documents which are accorded confidential treatment are only available in redacted format – i.e with the confidential information hidden.

However, even the information that is redacted from confidential documents is available for inspection under certain circumstances. Specifically, under Rule 11(e), the non-public information will be made available pursuant to the terms of a protective order issued by the Commission or to a confidentiality agreement executed by the party seeking its review. Such an order or confidentiality agreement will limit the use of the disclosed information but will not prevent its disclosure.

Dr. Firestone has specifically cited Rule 11(e) in his request for review of the Proposals. Presumably, he is prepared to execute a confidentiality agreement or agree to abide by the terms of a protective order in order to gain access to the Proposals in their entire form. If Rules 10 and 11 are deemed to apply in this case, any member of the public will gain access to the confidential sections of the Proposals merely by promising that they will use

such information in the manner described in the protective order or the confidentiality agreement.

CESI submits that Rule 10 does not apply to the proprietary provisions of the Proposals and that they are, therefore, not subject to public inspection under any circumstances. Rule 10 provides for disclosure of "public records" as that term is defined in 29 Del.C. Section 10002. 29 Del.C. Section 10002(g) specifically excludes from the definition of a "public record" "[t]rade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature". The confidential and proprietary sections of the Proposals are, therefore, carved out of the "public record" definition by 29 Del.C. Section 10002(g). Such information is not, therefore, subject to public inspection under any circumstances.

In light of this conclusion, there is a question of why Rule 11 is needed to deal with confidential information contained in documents that are, otherwise, subject to inspection. CESI submits that Rule 11 is required to deal with the special case of confidential information contained within documents submitted in a contested case before the Commission. Any party submitting such a document expects the Commission to rely upon the confidential portions and, because the case is contested, due process requires that all other parties in the case also have access to such information. The protective order or confidentiality agreement governing such access will limit the use of such information to the case in which it has been filed.

The Proposals, however, have not been submitted in a contested proceeding. While PSC Docket No. 06-241 is an open proceeding before the Commission, the only issue in the proceeding, thus far, involves the form and process of Delmarva's RFP. The Proposals were not filed in the Docket No. 06-241 and, thus, are not a part of a contested case file. There is, therefore, no due process need to give members of the public access to such information whether or not they sign a confidentiality agreement or agree to abide by a protective order.

Because its Proposal has been sent to one or more members of the Commission Staff the non-proprietary sections of that Proposal probably constitute a public record subject to public inspection under Rule 10. CESI intends to submit redacted versions of its Proposal by January 24, 2007 to accommodate such inspection. However, in light of the above, CESI will oppose any effort by Dr. Firestone or any other member of the public to gain access to the unredacted version of its Proposal either through execution of a confidentiality agreement or pursuant to any type of protective order.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "I. David Rosenstein".

I. David Rosenstein